United States Court of Appeals

for the Second Circuit

APPELLANT'S BRIEF

75-4015

B
P/S

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

ELIAS MBIROS,

Appellant-Petitioner,

DOCKET NO. 75-4015

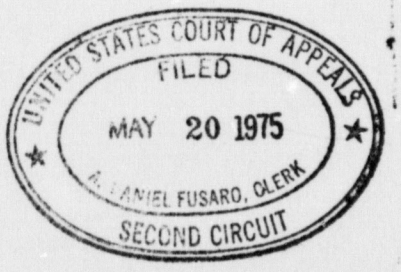
v.

IMMIGRATION AND NATURALIZATION SERVICE,

Respondent.

APPELLANT'S BRIEF

APPEAL FROM DISMISSAL OF
APPEAL BY BOARD OF IMMIGRATION
APPEALS



UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

ELIAS MBIROS,

Appellant-Petitioner DOCKET NO. 75-4015

v.

IMMIGRATION AND NATURALIZATION SERVICE,

Respondent.

APPELLANT'S BRIEF

APPEAL FROM DISMISALL OF
APPEAL BY BOARD OF IMMIGRATION
APPEALS

INDEX

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT
----------x

ELIAS MBIROS,

Appellant-Petitioner,

v.

IMMIGRATION AND NATURALIZATION SERVICE,

Respondent.
----------x

DOCKET NO. 75-4015

APPEAL FROM DISMISSAL OF APPEAL BY BOARD OF IMMIGRATION APPEALS

APPELLANT'S BRIEF

Appellant-Petitioner, Elias Mbiros, also known as Elias Biros, appeals from an order of the Board of Immigration Appeals (one member dissenting) which dismissed petitioner's appeal from the decision of The Honorable Eugene C. Cassidy, Immigration Judge, in Hartford, Connecticut, from an order of deportation. Appellant is an alien of Greek nationality whose rights to remain in the United States was attacked by the Government. The sole question here is one of compliance with procedural law.

POINT I

APPELLANT-PETITIONER WAS NOT REPRESENTED BY COUNSEL UPON THE HEARING BEFORE THE IMMIGRATION JUDGE BY ERROR OF THE GOVERNMENT

It will appear from the record of the proceedings before the Immigration Judge that the Appellant-Petitioner was granted "the right to be represented"by an attorney (Tr. 1, L.15). He answered: "I would like a lawyer" (Tr. 1, L.20).

Appellant further stated that he had engaged an attorney (Tr. I, L. 22) and gave his attorney's name to the Immigration Judge (Tr. I, L. 25). The question as to whether the mandate of the Court had been given or shown to appellants attorney was material. It was unanswered (Tr. 2, L. 2).

Equally material was the question as to whether the appellant wished to proceed (on the merits) "without a lawyer", to which the Appellant responded that he would like to have the hearing "with a lawyer" (Tr. 2, L. 8).

This was in effect an application for an adjournment. The word was not used by the Immigration Judge or by the Appellant. But the Appellant clearly said, quoting his attorney: "Whatever the Judge tells you, i'll take it from there" (Tr. 2, L. 14). Yet there would be nothing for the attorney to "take" if the determination was adverse in the Court of original jurisdiction (as indeed it was).

The Immigration Judge overlooked, or gave no consideration to the language used by a lay person, without counsel, unversed in our language, customs, privileges and jurisprudence. This was the first time the case was on, and no prior delay was had. The Government attorney should have taken a position at least to clarify patent ambiguity.

POINT II

APPELLANT-PETITIONER WAS DEPRIVED OF MATERIAL PROCEDURAL RIGHTS

Even if the Judge denied an adjournment which in effect transpired, opportunity (even by telephone call) would have protected and ensured that an attorney engaged by the appellant would forthwith attend a hearing (on the merits) as the Judge was advised he said he would, or someone from his office would attend, or the point would at least have been covered. Counsel for the Government simply failed to inquire or aid the Immigration Judge to learn what the Appellant, or his counsel meant by the language used by the Appellant without the presence of an attorney he allegedly engaged. Instead, counsel representing the Government was also aggrieved and stated that the Government *would appeal*. This, Appellant considers to mean that he took issue with the procedural aspect of the case, because

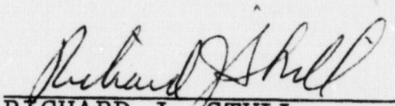
the Government won the case on the merits.

POINT III

THE DETERMINATION SHOULD BE REVERSED AND THE CASE REMANDED FOR A HEARING ON THE MERITS.

Dated: New York, New York
May 14, 1975

Respectfully submitted,



RICHARD J. STULL
Attorney for Appellant-Petitioner
Cloverly Circle
East Norwalk, Connecticut

Of Counsel:
STULL, STULL & BRODY
6 East 45th Street
New York, New York, 10017
(212) 687-7230

COPY RECEIVED

Carl J. Curran

UNITED STATES ATTORNEY

5/20/75